

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BILLY COOPER,

Petitioner,

- against -

J.F. BELLNIER, Superintendent, Upstate Correctional
Facility,

Respondent.
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TOWNES, United States District Judge:

Billy Cooper ("Petitioner") filed the instant *pro se* petition for a writ of habeas corpus (the "Petition") on April 21, 2009, having been convicted of murder in the second degree and criminal possession of a loaded firearm in the second degree following a jury trial in the New York State Supreme Court, Queens County. On December 4, 2009, this Court referred the matter to Magistrate Judge Joan M. Azrack for a report and recommendation ("R&R"). On March 31, 2010, Judge Azrack issued an R&R recommending that this Court deny the Petition. It was further recommended that no certificate of appealability issue due to Petitioner's failure to make a substantial showing of the denial of a constitutional right. This Court adopts Judge Azrack's R&R in its entirety.

A district court judge may designate a magistrate judge to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. *See* 28 U.S.C. § 636(b)(1). Within fourteen days of service of the recommendation, any party may file written objections to the magistrate's report. *See id.* Upon *de novo* review of those portions of the record to which objections were made, the district court judge may affirm or reject the recommendation. *See id.*

The Court is not required to review the factual or legal conclusions of the magistrate judge as to those portions of the R&R to which no objections have been made. *See Thomas v.*

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Arn, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). In addition, failure to file timely objections may waive the right to appeal this Court's order. *See* 28 U.S.C. § 636(b)(1); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

In the instant case, objections to the R&R were due within fourteen days of receipt of the R&R, which was mailed to Petitioner on March 31, 2010. To date, no objections have been filed with this Court. Upon review, this Court affirms and adopts the R&R of Judge Azrack in its entirety. Accordingly, Plaintiff's petition for a writ of habeas corpus is denied. Further, a certificate of appealability shall not issue.

SO ORDERED.

/SANDRA L. TOWNES'
United States District Judge

Dated: *April 10*, 2012
Brooklyn, New York